

Internal Revenue Service, Treasury

§ 1.860A-0

Example 2. Assume the facts are the same as in example (1) except that the district director, upon examining X's income tax return, asserts an income tax deficiency of \$4, based on an asserted increase of \$10 in real estate investment trust taxable income, and no agreement is entered into between the parties. X pays the \$4 on June 1, 1979, and files suit for refund in the United States District Court. The District Court, in a decision which becomes final on November 1, 1980, holds that X did fail to report \$10 of real estate investment trust taxable income and is not entitled to any refund. (No other item of income or deduction is in issue.) X pays a dividend of \$10 on November 10, 1980, files a claim for a deficiency dividend deduction of this \$10 on November 15, 1980, and is allowed a deficiency dividend deduction of \$10 for 1977. Assume further that \$4 is refunded to X on December 31, 1980, as the result of the \$10 deficiency dividend deduction being allowed. Also assume that any assessable penalties, additional amounts, and additions to tax (including the penalty imposed by section 6697) for which X is liable are paid within 10 days of notice and demand, so that no interest is imposed on such penalties, etc. X's liability for interest for the period March 15, 1978, to June 1, 1979, is determined with respect to \$10 (the amount of the deficiency dividend deduction allowed). X's liability for interest for the period June 1, 1979, to November 15, 1980, is determined with respect to \$6, *i.e.*, \$10 minus the \$4 payment. X is entitled to interest on the \$4 overpayment for the period described in section 6611(b)(2), beginning on November 15, 1980.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2108, Jan. 18, 1984]

§ 1.860-4 Claim for credit or refund.

If the allowance of a deduction for a deficiency dividend results in an overpayment of tax, the taxpayer, in order to secure credit or refund of the overpayment, must file a claim on Form 1120X in addition to the claim for the deficiency dividend deduction required under section 860(g). The credit or refund will be allowed as if on the date of the determination (as defined in section 860(e)) two years remained before the expiration of the period of limitations on the filing of claim for refund

for the taxable year to which the overpayment relates.

(The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045)

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

§ 1.860-5 Effective date.

(a) *In general.* Section 860 and §§ 1.860-1 through 1.860-4 apply with respect to determinations after November 6, 1978.

(b) *Prior determination of real estate investments trusts.* Section 859 (as in effect before the enactment of the Revenue Act of 1978) applies to determinations with respect to real estate investment trusts occurring after October 4, 1976, and before November 7, 1978. In the case of such a determination, the rules in §§ 1.860-1 through 1.860-4 apply, a reference in this chapter 1 to section 860 (or to a particular provision of section 860) shall be considered to be a reference to section 859 (or to the corresponding substantive provision of section 859), as in effect before enactment of the Revenue Act of 1978, and "qualified investment entity" in §§ 1.381(c)25-1(a) and 1.860-1 through 1.860-3 means a real estate investment trust.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

§ 1.860A-0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A-1 through 1.860G-3.

Section 1.860A-1 Effective dates and transition rules.

- (a) In general.
- (b) Exceptions.
 - (1) Reporting regulations.
 - (2) Tax avoidance rules.
 - (i) Transfers of certain residual interests.
 - (ii) Transfers to foreign holders.
 - (iii) Residual interests that lack significant value.
 - (3) Excise taxes.
 - (4) Rate based on current interest rate.
 - (i) In general.
 - (ii) Rate based on index.
 - (iii) Transition obligations.